

ENTERED

March 16, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LUIS A. FRANCISCO,

Petitioner,

v.

RAND HENDERSON,

Respondent.

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CIVIL ACTION NO. H-17-821

ORDER DISMISSING § 2241 PETITION WITHOUT PREJUDICE

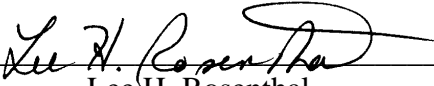
Luis A. Francisco, a pretrial detainee in Montgomery County Jail in Conroe, Texas, filed this petition for a writ of habeas corpus under 28 U.S.C. § 2241. (Docket Entry No. 1). Francisco argues that his detention is unconstitutional because the process by which the State revoked his pretrial bond did not satisfy the State's obligation to provide due process.

Francisco's petition is dismissed without prejudice, because he has not exhausted available state-court remedies. (*Id.* ¶¶ 5-6) (stating that Francisco has not made any challenge to his detention except for this federal habeas petition). Even though § 2241 does not explicitly incorporate an exhaustion requirement, well-settled Fifth Circuit law requires that petitioners challenging pretrial detention must exhaust state remedies. *Hartfield v. Osborne*, 808 F.3d 1066, 1073 (5th Cir. 2015); *Dickerson v. State of La.*, 816 F.2d 220, 225 (5th Cir. 1987). He has not raised the issue by filing a petition for a writ of habeas corpus under Texas law in the Texas district court in which his criminal case is pending. *Dudley v. Niell*, No. 3:15-CV-1434-D-BK, 2015 WL 6855635, at *4 (N.D. Tex. Oct. 9, 2015), *report and recommendation adopted*, No. 3:15-CV-1434-G (BK), 2015 WL 6809296 (N.D. Tex. Nov. 6, 2015); *see also Keith v. Cotton*, No. 3:09CV0199M, 2009 WL

1288417, at *2 (N.D. Tex. May 8, 2009). Until Francisco files such a petition and litigates it to finality in the state system, he cannot challenge his detention in federal court.

Francisco's petition is therefore dismissed without prejudice to refile it after he has exhausted state-court remedies.

SIGNED on March 16, 2017, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge